

HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 312 OF 2005.

Shri. Ramesh Ramnath Shetty
@ Shettiya @ Tambi,
Indian Citizen, Age: 39 years,
Occu: Business, R/o: Piriyar Chawl,
Vithubai Bakery, General Stores,
Jarimari, Sakinaka, Kurla(W),
Mumbai 400 070.
Presently lodged in Arthur Road
Central Prison, Mumbai. ..Petitioner.

Versus.

1. Shri. A.N.Roy,
Commissioner of Police,
Brihan Mumbai.
2. The Suprintendent,
Thana Central Prison,
Thana, Dist: Thana.
3. The State of Maharashtra. ..Respondents.

Mr. M.S.Mohite for the petitioner.
Mr. D.S.Mhaispurkar, APP for the respondents.

CORAM: S.B.MHASE &
S.R.SATHE JJ

DATE: AUGUST 17, 2005.

Oral Judgment (Per S.R.SATHE, J.).

1. The Petitioner has filed this petition under Article 226 of the Constitution of India seeking writ of habeas corpus inter-alia challenging the detention order passed against him by the Commissioner of Police, Brihan Mumbai on 17th September 2004, while exercising powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug

Offenders & Dangerous Persons Act, 1981 (hereafter referred to as "the said Act.")

2. The said order of detention was passed on the basis of C.R.No. 192 of 2004 registered against the Petitioner for the offence punishable under Sections 302 read with 34 of the Indian Penal Code read with Section 37(1)(a) read with 135 of Bombay Police Act as well as two in-camera statements recorded on 28.7.2004 and 29.7.2004.

3. The said detention order was approved by the Government of Maharashtra on 20.9.2004. Thereafter on 21.9.2004, when the Petitioner was in jail in connection with C. R. No.192 of 2004 as he had not availed bail granted on 14.9.2004, the order with regard to detention was served on him. However, on that day he refused to accept the copies of the grounds of detention and other documents accompanying the same.

4. It is the case of the Petitioner that on 2.10.2004, he submitted one application addressed to the Commissioner of Police, Mumbai through the Superintendent, Thane Jail. However, no action was taken by the Respondents. Thereafter on 3.11.2004, the wife

of the Petitioner made an application to the Commissioner of Police enclosing the application dated 2.10.2004 of the Petitioner. This application was received by the Home Department on 8.11.2004 through PCB-CID. It is the case of the Petitioner that there was considerable delay on the part of the Respondents in supplying the grounds of detention as well as the copies of other documents and the same were supplied on 11.12.2004. Thus, according to the Petitioner the provisions of Article 22(5) of the Constitution of India have been violated.

5. Though the detention order is challenged on several grounds, the learned Advocate for the Petitioner has mainly placed reliance on the ground of delay. As we are of the view that present petition can be disposed of on that count alone we are not referring to other grounds.

6. Shri. M.S.Mohite, learned Advocate appearing on behalf of the Petitioner canvassed before us that though the Petitioner had refused to accept the copies of grounds of detention and other documents on 21st September 2004, the Respondents were under obligation to supply the said documents to the Petitioner when the

Petitioner made an application and requested the concerned authority to supply those documents. However, there was considerable delay in actually supplying those documents and as a result of the same, the earliest opportunity to make representation could not be availed of by the Petitioner and as such the order of detention is vitiated. As against this, Shri. D.S.Mhaispurkar, learned APP submitted that the Respondents had in fact at the earliest occasion sought to serve the copies of grounds of detention as well as other documents on the Petitioner on 29.9.2004, however, without any justifiable cause the Petitioner refused to accept the same and as such now it does not lie in his mouth to say that there was delay on the part of the Respondents in supplying the copies. So, the point is, whether the refusal on the part of detainee to accept the copies of documents tried to be served on him at the earliest occasion would absolve the concerned authorities from their obligation of supplying the copies thereafter when the same were subsequently asked by the detainee ?

7. In order to answer above question correctly one must keep in mind the object behind the provision of Article 22(5) of the Constitution of India. It says

"When any person is detained in pursuance of

an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

8. The importance of supplying the copies on which the authority is relying is emphasised by the Hon'ble Apex Court as long back as in 1980. In **Mrs. Nafisa Khalita V/s. Union of India & Ors.** reported in (1982) 1 SCC 422, Their Lordships have observed that:

"A demand for documents should not be taken lightly but the detaining authority must be prepared to supply at least those materials or documents which are clearly mentioned in the grounds of detention and he must have those materials ready with him so as to be given to the detenu as and when asked for, with utmost despatch. The dilatory procedure adopted by the detaining authority in referring the question of supplying of documents to various authorities and inviting their comments is condemnable. The detenu cannot make any effective representation unless he gets copies of the documents which are expressly mentioned in the grounds of detention. In the present case the explanation given by the detaining authority for delay of about 28 days in sending the documents to the detenu does not appear to be satisfactory or convincing. The continued

detention of the detenu therefore, becomes illegal on this ground also."

9. Similarly, in a subsequent case **M. Ahamedkutty v/s. Union of India & Ano.** reported in (1990) 2 SCC 1, Their Lordships have observed:

"The detenu has the right to be furnished with the grounds of detention along with the documents relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation guaranteed under Article 22(5). It is immaterial whether the detenu already knew about their contents or not. The question of demanding documents is also wholly irrelevant and the infirmity in that regard is violative of Article 22(5)."

10. Bearing in mind the above observations of the Hon'ble Apex Court, we have to find out whether in the instant case there was any delay on the part of the Respondents in supplying the copies of grounds of detention and other documents to the Petitioner.

11. On perusal of the affidavit of Satish Pawaskar, Under Secretary, Home Department(Special), Government of Maharashtra, dated 4.5.2005, affidavit of one Bandu Dada Bansode, Police Sub-Inspector attached to

Kurla(West) Police Station, Mumbai and affidavit of one Karim S. Shaikh, Senior of Inspector of police attached to PCB-CID, it is very clear that on 2.10.2004 the Petitioner had, in fact submitted an application requesting to supply copies of documents, admit was received by the Jailor - Mr. Nighot. However, curiously enough the affidavit of the said Jailor is not filed by the Respondents. It is also evident from the above mentioned affidavits that the wife of the Petitioner had sent one application dated 3.11.2004 wherein she had requested to supply the copies of grounds of detention and other documents. Admittedly, the said application was received by the Home Department on 8.11.2004. So, on receipt of this application it was incumbent on the State Government to provide copies of the grounds of detention and other documents to the Petitioner at the earliest. However, we find that instead of supplying copies, the wife of the Petitioner was informed that she may approach the Commissioner of Police, Mumbai to secure the copies of the grounds of detention and other documents. Admittedly the said letter was received by the wife of the Petitioner on 13.11.2004. However, thereafter copies were not supplied either to the wife of the Petitioner or to the Petitioner. In fact, as per the provisions of Section 8

of the said Act it is very clear that it was necessary for the Respondents authority to supply the copies to the detinue but that has not been done. On the contrary, the Respondents asked the Petitioner, who was admittedly in jail at the relevant time to approach the Commissioner of Police. It is pertinent to note that in the affidavits of Satish Pawaskar and other two Police Officers mentioned above, there is nothing to show as to why from 13.11.2004 till 11.12.2004 copies were not served on the Petitioner. In fact, no explanation is given by the Respondents in this behalf. So, when we find that no satisfactory explanation is given by the Respondents for delay in supplying the copies of grounds of detention and other documents to the Petitioner, the said delay has to be considered as fatal. In fact, the learned counsel for the Petitioner has drawn our attention to two judgments of Division Bench of this High Court. The first one is **Vilas Siddhu Jadhav v/s. M. N. Singh & Ors** reported in **2003 ALL MR (Cri) 1450** and another is judgment dated 20th September 2003, in **Criminal Writ Petition No. 155 of 2003**.

12. In a case reported at **2003 ALL MR (Cri) 1450** the detinue had initially refused to accept the copy of grounds of detention and documents attached to it but

subsequently he demanded the same and there was delay of 21 days in supplying the copies. In such conditions the Court observed:

"Even if the detenue refused service of the documents but when his advocate applied for supplying him the documents what was required was mere tender of the set to the detenue and nothing new was to be prepared. Delay has resulted in affecting the right of detenue to make representation at the earliest point of time as envisaged under Article 22(5) of the Constitution of India."

13. Thus, it is very clear that though initially the Petitioner had refused to take the copy of the grounds of detention and other documents, the Respondents were under obligation to supply the said copies to the Petitioner as and when the Petitioner had made actual demand in that behalf. But the Respondents have failed to do so. Naturally, it has resulted in vitiating the provisions of Article 22(5) of the Constitution of India.

14. We are, therefore, of the view that the order of detention passed on 17.9.2004 is vitiated because there is delay of about 28 days in supplying the copies of grounds of detention and other documents to the

Petitioner and as such he shall have to be released.

15. Before parting with this petition, we are constrained to observe that the concerned authorities must be very vigilant in such matters and see that the copies are delivered to the detinue correctly and promptly so that they are not required to be released merely because of non observance of some small things but which have great impact.

16. In this view of the matter, Petition is allowed.

17. Order of detention dated 17th September 2004 passed by the Commissioner of Police, Mumbai against the Petitioner is quashed and set aside.

18. Petitioner be set at liberty forthwith, if not required in any other case.

19. Rule is made absolute.

(S.R.SATHE, J.)

(S.B.MHASE, J.)

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